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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1117

ISABEL CARMEN SAURI TYRELL ET AL., *Petitioners*

v.

SUPERIOR COURT OF PUERTO RICO, PONCE PART,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PUERTO RICO

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ISABEL CARMEN SAURI TYRELL, and others similarly situated, pray that a writ of certiorari issue to review the judgment of the Supreme Court of Puerto Rico entered on October 15, 1965, denying petitioners' petition for a writ of certiorari to review the judgment of the Superior Court of Puerto Rico, Ponce Part, entered on December 14, 1964.

OPINIONS BELOW

The judgment of the Superior Court of Puerto Rico (R. 93), which represents the effective determination of the merits here, is unreported and is printed in Appendix A hereto, page 1a, *infra*. The judgment of

the Supreme Court of Puerto Rico (denying petitioners' petition for certiorari to review the aforesaid judgment of the Superior Court) is unreported and is printed in Appendix B hereto, p. 15a, *infra.*

JURISDICTION

The judgment of the Supreme Court of Puerto Rico sought to be reviewed was entered October 15, 1965. An extension of time until March 14, 1966, was granted by Mr. Justice Fortas for filing petition for certiorari.

The jurisdiction of this Court is invoked under 28 U. S. C. section 1258(3).

QUESTION PRESENTED

The sole question presented is whether the Puerto Rican courts have accomplished a manifest injustice by means of a misconstruction of a procedural rule which is substantially identical to Rule 60 of the Federal Rules of Civil Procedure, adopted by this Court, and the construction of which purports to follow the construction of said Rule 60 of the Federal Rules of Civil Procedure.

STATUTES AND RULES INVOLVED

28 U. S. C. section 1258

> "Final judgments or decrees rendered by the Supreme Court of the Commonwealth of Puerto Rico may be reviewed by the Supreme Court as follows:
>
> . . .
>
> "(3) By writ of certiorari . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties, or statutes of, or commission held or authority exercised under the United States."

Rule 49.2, Rules of Civil Procedure for the General Court of Justice of Puerto Rico:

> "Mistakes; Inadvertence; Surprise; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; * * * or (6) any other reason justifying relief from the operation of the judgment. * * * The motion shall be made within a reasonable period, and in any case not more than six months after the judgment, order, or proceeding was entered or taken." Rules of Civil Procedure for the General Court of Justice of Puerto Rico (1958), 9 Laws of Puerto Rico anno. (1964 Supp.).

STATEMENT

The decision of the Superior Court of Puerto Rico which the Supreme Court of Puerto Rico has refused to review represents the latest culmination of a long and bitter litigation involving the claims—hitherto successful—of an alleged illegitimate and unacknowledged child in the line of inheritance to a Puerto Rican family fortune. This Court has previously denied certiorari on another phase of this litigation, *Luis J. Nicole et al.* v. *Mercedes Ortiz Berdecia et al.*, No. 244, October Term 1964, certiorari denied October 11, 1965. The questions on the merits involve Puerto Rican and Spanish laws of inheritance which this Court may feel should be peculiarly within the cognizance of the courts of Puerto Rico. These petitioners do not, therefore, seek to present such questions to this Court. They seek only to present the question of the construction by the Puerto Rican courts of a procedural rule which is

modelled after Rule 60 of the Federal Rules of Civil Procedure, and where that construction has apparently contributed materially to the refusal of the Puerto Rican courts to reconsider a decision which petitioners consider accomplishes a manifest injustice.

The rule in question is Rule 49.2 of the rules governing the Superior Court of Puerto Rico. This rule is set out, in relevant part, at page 3, *supra*. Paragraphs (1) and (6) of this rule were invoked by petitioners in an effort to obtain a reconsideration on the merits by the Superior Court. This effort was rejected by that Court on the ground, primarily, that it had no power to reconsider under Rule 49.2, unless the rule was invoked *within the time allowed for a direct appeal.* (R. 173).

The point here relied upon was presented to the Supreme Court of Puerto Rico in petitioners' petition for review, paragraph 3(a), (R. 2).

REASONS FOR GRANTING THE WRIT

1. The Puerto Rican Rule 49.2 is substantially identical to Rule 60(b) of the Federal Rules of Civil Procedure. As pointed out by the Superior Court, the Puerto Rican rule in effect originally (Rule 60(b) also) "was amended when it was incorporated as Rule 49 of 1958, following the amendment which had been made to the federal rules in 1946." (R. 172). The Island policy of following the federal rules is apparent. It is in the interest of orderly development of the Island rules that their construction be uniform with that of the federal rules.

The situation in this respect is similar to that prevailing in Guam. With respect to the Guam rules, (which are also modelled after the Federal Rules of

Civil Procedure) the Court of Appeals for the Ninth Circuit has said:

> "Guam Rule 60(b) was prescribed by the Judicial Council of Guam on December 15, 1954, pursuant to the authority vested in it by Section 123 of the Guam Code of Civil Procedure. This and many other rules so prescribed are almost identical with their counterparts by the same number in the Federal Rules of Civil Procedure. This indicates to us that, to the extent that uniformity of rule-language was attained, the Judicial Council intended uniformity of construction. It follows that Guam Rule 60(b) carries the statutory gloss of federal Rule 60(b), rather than that of the statutes of Guam referred to above." *Corn* v. *Guam Coral Company*, 318 F. 2d 622, 631.

2. Rule 60(b), F.R.C.P., and Puerto Rican Rule 49.2 both permit a motion to set aside a judgment to be brought within a "reasonable time". There is no basis in the history of the rule (see Moore's Federal Practice, Civil Rules and Official Forms, 1963, p. 1035 et seq.) for an arbitrary and *a priori* determination that "reasonable time" means in any and all cases "appeal time", i.e., the time within which a direct appeal could have been taken. It is true that Moore expresses a contrary view:

> "By analogy to the time limitation upon the bill of review for error of law, and in the interest of finality of judgments, a reasonable time should not exceed the time allowed for appeal from the judgment. So limited, a motion for relief under 60(b)(1) does not unduly affect the sound principle of finality, nor the general principle that 60(b) is not a substitute for appeal. At the same time it infuses needed flexibility into our procedure, and allows the district court to correct judicial errors that must otherwise be corrected by

appeal." Rule 60(b)(1) par. 60.22[3] Moore's Federal Practice, 2nd Ed. Vol. 7, page 238.

Moore's opinion in this regard is not only illogical in the light of the history of the rule and particularly the 1946 amendments, but it is inconsistent with his own statements. In the paragraphs preceding, in his treatise, Moore points out that the amended rule is intended to be broader and more flexible, in the interest of fundamental justice, than the old bill of review (which was limited to error apparent on the record). Thus, what possible reason would there be to arbitrarily delimit the operation of a "reasonable time", by "analogy to the time limitation upon the bill of review."? Similarly, what possible justification would there be to so delimit "reasonable time" by the "interest of finality of judgments", when the very purpose of Rule 60, and particularly of the 1946 amendments, was to *avoid* an absolute "finality of judgments", in proper cases?

3. The Superior Court, after holding that petitioners' motion was too late, purported to go and decide it anyway (R. 174). But it is quite apparent, we submit, that although well-intentioned this was a gesture, and that the decision was really rested on the court's interpretation of a "reasonable time".

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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